Original

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Equal Access and Interconnection Obligations Pertaining to Commercial Mobile Radio Services	)	CC Docket No. 94-54 RM-8012

To: The Commission, en banc.

COMMENTS IN OPPOSITION TO RULEMAKING

MICHAEL B. AZEEZ d/b/a DEADWOOD CELLULAR TELEPHONE COMPANY, DURANGO CELLULAR TELEPHONE COMPANY, OHIO STATE CELLULAR PHONE COMPANY, INC. and TRILLIUM CELLULAR CORPORATION (the "Independent RSA Carriers" or "Carriers"), by their attorney, hereby respectfully submit their comments in opposition to the proposed rulemaking in the captioned proceeding, to the extent the proposal would impose so-called "equal access" obligations on their cellular operations. As their comments in opposition, the Carriers respectfully show:

Introduction and Summary

The Independent RSA Carriers are entrepreneur owned and operated cellular licensees engaged in providing cellular service in small Rural Service Areas.[1] Their sole business is serving rural cellular markets; they do not serve any MSAs and they are not affiliated with any Local Exchange Carriers (LECs) or any

[1] South Dakota 1 - Harding RSA, Market No. 634A; Colorado 6 - San Miguel RSA, Market No. 353A; Ohio 1 - Williams RSA, Market No. 585A; and Michigan 3 - Emmet RSA, Market No. 474A, respectively. The largest of these markets has fewer than 150,000 in population.

Interexchange Carriers (IXCs). The proposal set forth in the Notice of Proposed Rule Making and Notice of Inquiry (the "NPRM") in the captioned proceeding[2] would nonetheless obligate them to afford what is denominated as "equal access" to IXCs, and to engage in balloting and presubscription and related functions with respect to the long distance calls to or from the cellular mobiles served by the Carriers.

The Independent RSA Carriers strongly oppose the proposed rulemaking herein to the extent it would impose any form of "equal access" obligation on them.[3] The NPRM is devoid of any analysis or rationale whatsoever that would justify imposition of such obligations on independent cellular licensees (i.e., licensees not otherwise affiliated with either LECs or IXCs). Equally importantly, the Carriers' experience has been that aggregating their customers' long distance traffic in order to get the benefit of volume discounts is the only way the IXCs have been willing to compete for this class of traffic. Under these circumstances, imposition of equal access obligations would merely impose additional costs on consumers without yielding any consumer benefits.

Moreover, imposing "equal access" obligations would drastically limit or wholly prohibit the Carriers from offering

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[2] Notice of Proposed Rule Making and Notice of Inquiry, FCC 94-145, adopted June 9, 1994 and released July 1, 1994.

[3] The Carriers are aware that many other issues are included in the NPRM but do not take a position on those proposals at this time.

various rate plans to their customers that include discounts on toll usage. Thus, imposition of "equal access" obligations on small independent cellular carriers likely would have the anomalous result of both increasing consumer costs on those systems and reducing existing consumer benefits. Therefore, if the Commission decides to proceed with its proposal at all, it should at least wholly exempt independent cellular carriers from any blanket obligation, but should continue to address such matters on a case-by-case basis under Section 201 of the Communications Act if and when a complaint against such carrier ever arises.

Comments in Opposition to Rulemaking

At the outset, it is important to point out that nowhere in the lengthy NPRM is there any discussion that could arguably justify imposition of "equal access" obligations on independent, entrepreneur-operated cellular systems, i.e., systems that are not otherwise affiliated with either IXCs or LECs. Such independent cellular systems have no economic incentive to make their decisions relating to long distance service on anything other than normal marketplace considerations.

The Carriers recognize that a large part of the cellular industry does have these affiliations. The Carriers are not saying that such affiliations necessarily justify imposition of equal access in and of themselves. However, for those carriers that do not have these affiliations, the NPRM plainly fails to set forth any credible rationale for imposing equal access.

In this regard, unlike in the case of landline telephone service, there are significant additional usage charges associated with making long distance telephone calls on a celluar mobile, in addition to the landline toll charges themselves. Therefore, the level of the landline toll charge itself does not hold the same economic significance in cellular service as in the case of landline toll service.[4] Moreover, the Independent RSA Carriers' experience has been that the customer does not complain about the level of landline toll charge associated with a call, he complains about the lack of radio signal coverage when he desires to make a call and he complains about interference to the signal when he is making a call. In other words, given the cost of the cellular call to begin with (even if some savings can be had on the landline toll portion itself), the customer is concerned most about obtaining value for the expenditure involved -- i.e., about having quality cellular service available where and when he needs it.

Accordingly, it is unreasonable to make assumptions about the potential affect of "equal access" in the cellular environment simply on the basis of experience in landline telephony. The two markets are quite different and require

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[4] The Carriers are not suggesting that the level of landline toll charge is unimportant, or that savings in toll charges cannot stimulate usage of cellular service. Indeed, the Carriers themselves offer rate plans based on the assumption that toll discounts can help stimulate cellular usage. (See infra). However, the level of the toll charge itself does not have the same impact in cellular as in landline service, and jumping to conclusions about the impact of equal access in cellular, based upon experience in landline service, is at best hazardous.

careful individual analysis before drawing particular conclusions about whether mandating "equal access" for cellular service under the Communications Act would be in the public interest.[5]

In fact, the Carriers' experience has been that, contrary to their self-serving claims in this rulemaking, the IXCs have shown little interest in competing for the toll traffic generated by the Carriers' cellular customers. To the extent they have shown any measurable interest at all, it has only been to the extent that the Carriers have been willing to aggregate all of their customers' long distance traffic together and sign a multi-year commitment to deliver all of the traffic to the IXC. In such circumstances, the IXCs have been willing to make available their standard volume discounts; otherwise, they have insisted upon full retail prices for cellular long distance traffic.

In some cases, their attitude may result from the fact that the territory served by the Carriers makes it too expensive for the IXCs to compete for the traffic. In most of the Carriers' markets, for example, there is no access tandem anywhere in their service area. Typically, in such case, the only practical way to access IXCs is via a Type 1 connection and switched access. The

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[5] In this regard, it is a particularly significant omission that the IXC interests have not troubled to document the asserted beneficial impact of equal access in the cellular environment. BOC cellular systems have been providing "equal access" on their cellular systems for several years now. Therefore, it would seem that the proponents of equal access should have ample empirical evidence of its public interest benefits to submit for the record. The absence of such evidence should weigh heavily against their position.

cost of access in such situation may make it uneconomic for IXCs to compete meaningfully for cellular long distance traffic.

In any event, this fact also serves to illustrate the point that the cost considerations of cellular equal access are substantially different in the cellular environment than in the case of landline telephony. Based upon the Carriers' experience, for example, having to implement a Type 2 connection to accommodate equal access would be totally uneconomic because there is no access tandem anywhere in the service area. Furthermore, cellular is a discretionary rather than "basic" service, so customers simply elect to drop off (or not to subscribe in the first place) when the costs go up. In turn, that reduces the customer base over which to spread the cost of implementing equal access.

Equally if not more importantly, all of the cost of implementing equal access would be placed on the cellular carrier, with none on the IXC. This precludes normal marketplace considerations from tempering the IXCs' demands, and fosters a situation where the costs of equal access are incurred even though the IXCs have no intention whatsoever of competing for traffic affected. In the landline environment, the competitor IXCs had to establish one or more points of presence in a LATA and invest in access facilities in order to compete for customers in that market. Therefore, normal economic forces acted as a curb on their demands -- if they did not think there was enough potential traffic to be profitable, or if they did not otherwise

intend to seriously compete for the traffic, they would not make the investment required to be able to serve that LATA.

In cellular, however, no investment in access whatever is required by the IXC beyond the investment already made for landline service. Therefore, the IXC can freely demand that the cellular carriers invest in providing equal access without any intention of genuinely competing for that traffic. Attempting to have the IXCs pay a portion of this cost obviously would be counterproductive, because such costs would merely act as an additional barrier to getting the IXCs to genuinely compete for this traffic. On the other hand, as noted above, the most likely outcome of imposing equal access in cellular service is that the cellular customers themselves would have to pay all of the costs, with little or no corresponding benefit in the way of lower landline toll charges or otherwise.[6] Under these circumstances, the Carriers are not aware of any public interest justification whatsoever for imposing equal access obligations on their systems.

The Carriers also point out that as part of their normal competitive response to marketplace forces, they have developed and are offering to their customers various rate plans that offer

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[6] The only customer that might benefit is the large corporate customer that theoretically could aggregate its entire traffic over several cellular systems and contract with a single IXC on that basis. Such benefit, however, would at most be available to only a few large customers, and their savings likely would be more than offset by the increased costs to the numerous smaller cellular customers whose cellular bill would have to be increased to pay for the cost of equal access.

discounted toll service in "bulk" to their customers at various flat rates base on volume usage. These plans enable customers to realize at least some of the discounts which the Carriers have been able to obtain from the IXCs by aggregating their customers' traffic. It is in the Carriers' economic interest to offer these types of discounts off retail landline toll charges -- even in the absence of "equal access" -- because doing so helps to stimulate usage of the system and thus generates additional profit potential for the carrier.

Anomalously, however, imposing "equal access" would remove this benefit from the consumer because it would fragment the long distance traffic that is necessary to achieve volume discounts that make it economically feasible to offer the discounted rate plans in the first place. In other words, not only would imposing equal access obligations on the Independent RSA Carriers result in substantial additional costs for their customers with few or no corresponding benefits, but doing so also would eliminate consumer benefits that already exist.

Finally, the Carriers are constrained to point out that the volume of long distance traffic generated by their customers is far less than the landline traffic generated by numerous large corporations. In the case of the large corporations, the Commission's consistent view in recent years has been that it is in the public interest for the corporations to aggregate their landline traffic and negotiate volume discounts with the IXCs, thereby presumably enhancing the profitability of their business.

The Commission has never explained why those same considerations do not apply in the case of cellular service and, in particular, in the case of independent cellular operators.[7] Absent a principled distinction between the two situations (and the Carriers are aware of none), it would be arbitrary and unreasonable to deny the same economic freedom to the cellular industry.

CONCLUSION

The original criticism of the cellular industry which supposedly provided the basis for MCI's rulemaking petition is that the cellular carriers were overcharging their customers for landline toll service by continuing to charge retail toll rates and refusing to pass through volume discounts achieved by aggregating their customers' traffic. The premise is a false one to begin with, because the Carriers and many others already have the incentive to use those volume discounts as marketing tools to stimulate cellular usage.

Moreover, "equal access" is not an answer in any event. The IXCs have not demonstrated that they would genuinely -- and in the Carriers' experience have actually refused to -- compete for the long distance traffic of cellular subscribers, especially in

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[7] The NPRM appears to suggest that notions of "regulatory parity" may counsel imposing the equal access obligations on non-wireline carriers because the BOCs have them as a result of an antitrust consent decree. Such logic is egregiously misplaced, and would be tantamount to punishing everyone for the BOCs' sins rather than just the BOCs. If there is no independent public interest justication for equal access, notions of "regulatory parity" plainly cannot supply one.

smaller markets. Imposing equal access thus would be counterproductive because it would forcibly fragment cellular traffic and prevent volume discounts; it would impose substantial additional costs on cellular customers and discourage demand for service; and it would eliminate emerging consumer benefits arising out of a cellular carriers' ability to aggregate traffic and negotiate volume discounts from an IXC. In short, the proposal to impose equal access on the cellular industry on the basis of Section 201 of the Communications Act, at least for those carriers not affiliated with LECs or IXCs, is improvident and should be rejected.

Respectfully submitted,

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September 12, 1994